

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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2022 ND 70

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Jerry Verl Holmes, Sr.,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

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No. 20210284

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Appeal from the District Court of Williams County, Northwest Judicial District, the Honorable Benjamin J. Johnson, Judge.

AFFIRMED.

Per Curiam.

Kiara C. Kraus-Parr, Grand Forks, ND, for petitioner and appellant.

Nathan K. Madden, Assistant State's Attorney, Williston, ND, for respondent and appellee; submitted on brief.

**Holmes v. State**  
**No. 20210284**

**Per Curiam.**

[¶1] Jerry Holmes, Sr. appeals from a district court order denying his application for post-conviction relief. Holmes argues the court erred in summarily dismissing his application based on newly discovered evidence. He contends that a hearing on newly discovered evidence is separate and distinct from a summary judgment motion hearing and that disputed facts exist in this case on whether he committed the crime, whether the complaining witness recanted, and whether the submitted statement supports a claim of newly discovered evidence. Holmes failed to present competent admissible evidence that raises a genuine issue of material fact. We summarily affirm under N.D.R.App.P. 35.1(a)(6) and (7); *Yoney v. State*, 2021 ND 132, ¶ 6, 962 N.W.2d 617 (explaining that when the State moves for summary dismissal, an applicant must present “competent admissible evidence by affidavit or other comparable means which raises a genuine issue of material fact” to avoid a summary dismissal).

[¶2] Jon J. Jensen, C.J.  
Gerald W. VandeWalle  
Daniel J. Crothers  
Lisa Fair McEvers  
Jerod E. Tufte